

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GERARDO HERNANDEZ,

Defendant.

8:18CR21

ORDER

This matter is before the Court on defendant Gerardo Hernandez's ("Hernandez") Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 79). Hernandez alleges his counsel was constitutionally ineffective by failing to (1) challenge the drug quantity charged, (2) challenge the presence of a weapon, and (3) file an appeal. On initial review, the Court found (Filing No. 81) that summary dismissal was not appropriate and ordered the government to respond. The government agrees an evidentiary hearing is necessary to "evaluate the credibility of Hernandez and his counsel."

Under Rule 8(c) of the Rules Governing Section 2255 Proceedings, where, as here, "an evidentiary hearing is warranted," the Court "must appoint an attorney to represent a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A." *See Green v. United States*, 262 F.3d 715, 718 (8th Cir. 2001). The Court has determined Hernandez is financially eligible for appointed counsel. Accordingly,

IT IS ORDERED:

1. The Federal Public Defender for the District of Nebraska is appointed to represent Hernandez at the evidentiary hearing. In the event the Federal Public Defender accepts this appointment, the Federal Public Defender shall promptly file an appearance in this matter. In the event the Federal Public Defender should decline this appointment because of a conflict of interest or on the basis of the Amended Criminal Justice Act Plan, the Federal Public

Defender shall provide the Court with a draft appointment order (CJA Form 20) bearing the name and other identifying information of the CJA Panel attorney identified in accordance with the Amended Criminal Justice Act Plan for this district.

2. The Clerk of Court shall provide a copy of this order to the Federal Public Defender for the District of Nebraska.

Dated this 24th day of March 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
United States District Judge